

# FINNISH LEGISLATION ON LAND-USE RESTRICTIONS AND COMPENSATION

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## I. INTRODUCTION

The aim of this Article is to present an overview on Finnish legislation<sup>1</sup> on land-use restrictions and requirements for compensation in cases of different types of restrictions. The first part focuses on general issues concerning land-use restrictions, their relation to the constitutional protection of property ownership, the requirements for compensation, and the amount of compensation property owners are entitled to. The second part discusses different types of land-use restrictions. The third part of the Article focuses on legislation concerning certain types of land-use restrictions based on planning decisions (including land-use planning, building protection, nature conservation, and public networks, such as roads and power lines) and considers their legal effects, as well as compensation issues.

Private property ownership is limited not only by the risk of expropriation but also by other types of land-use restrictions laid down by legislation. These restrictions do not necessarily include a transfer of ownership; however, they do limit landowners' rights to their properties and thereby limit the scope of ownership. When evaluating these limitations, the following questions arise:

- What are the requirements for land-use restrictions?
- How does the restriction affect the status of the landowner?
- Is the restriction subject to compensation?
- If so, how is the compensation assessed?

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1. The paper uses the unofficial English translations of the names of the Finnish Acts.

## II. GENERAL ISSUES

### A. *The Constitutional Protection of Property Ownership, Land-Use Restrictions, and the Convention for the Protection of Human Rights and Fundamental Freedoms*

The Finnish Constitution states in section 15 that the “property of everyone is protected” and that “[p]rovisions on the expropriation of property, for public needs and against full compensation, are laid down by an Act.”<sup>2</sup> The first statement constitutes the primary rule of the constitutional protection of ownership, where expropriation is an exception to this rule.<sup>3</sup> In all instances of expropriation, the requirements of public need and full compensation must be met, and the expropriation must be based on parliamentary legislation.<sup>4</sup> Here, expropriation refers to the transfer of ownership or other property rights from the owner to another party without the owner’s consent.<sup>5</sup>

There are other procedures that do not include the transfer of ownership but in some other way limit landowners’ rights to property; these are designated as land-use restrictions. Some of these land-use restrictions are based on public planning decisions for things such as land use, nature conservation, public roads, or other public networks purposes. Other land-use restrictions have their basis in private interests, such as establishing easements or building private roads. In this Article, the focus is on restrictions based on public planning decisions.

In general, land-use restrictions are compensated to the extent that they are considered to infringe on the constitutional protection of property. However, according to the principle of social obligation, some land-use restrictions that are based on public needs are not compensated; landowners must tolerate these restrictions. The requirements for such restrictions are that they do not affect the “normal, reasonable and sensible use” of the property.<sup>6</sup> Additionally, the restrictions must be general and non-discriminatory. Restrictions fulfilling these criteria are not considered to infringe on the protection of property ownership.<sup>7</sup>

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2. Suomen perustuslaki [SP] [Constitution] (731/1999) § 15 (Fin.).

3. *Id.*

4. *Id.*

5. Laki kiinteän omaisuuden ja erityisten oikeuksien lunastuksesta [Act on the Redemption of Immovable Property and Special Rights] (603/1977) § 3 [hereinafter Expropriation Act].

6. The criteria has been established in the statements of the Parliament Constitutional Law Committee. *See infra* note 8.

7. H. UNGERN, TÄYDEN KORVAUKSEN PERIAATE MAANKÄYTÖN RAJOITUSTEN KORVAAMISESSA

Procedurally, when land-use legislation is being enacted or altered, the Parliament Constitutional Law Committee assesses the legislation's possible effects on the protection of property.<sup>8</sup> If the Committee finds that the legislation imposes restrictions that are not in the scope of social obligation and infringe on the protection of property, the Committee advises the Parliament to take this infringement into consideration in the enactment process by including, for example, a compensation clause in the provisions concerning these restrictions. Such a clause is one of the requirements for compensation to be issued.<sup>9</sup>

In addition, property ownership is protected by the European Council's Convention for the Protection of Human Rights and Fundamental Freedoms, which Finland ratified in 1990.<sup>10</sup> Article 1 of the First Additional Protocol of the Convention includes a provision on protection of property ownership.<sup>11</sup> This provision gives member states a relatively wide margin of appreciation concerning restrictions to the protection of property ownership; in Finland, the domestic regulation of the protection of property ownership is considered to be more extensive than the Convention's.<sup>12</sup> However, there are judicial decisions concerning the protection of property ownership that have found Finland to have violated article 1 of the First Protocol of the Convention.<sup>13</sup>

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I [PRINCIPLE OF FULL COMPENSATION IN LAND USE RESTRICTIONS I] 8–9 (1998) (author's trans.).

8. According to section 73 of the Finnish Constitution, the task of the Parliament Constitutional Law Committee is to issue statements on the constitutionality of legislative proposals and other matters brought for its consideration. In addition, the Committee issues statements on the relation of legislative proposals and other matters to international human rights treaties.

9. See discussion *infra* Part II.C.

10. MATTI PELLONPÄÄ, EUROOPAN IHMISOIKEUSSOPIMUS [THE EUROPEAN CONVENTION ON HUMAN RIGHTS] 7 (Talentum 2005).

11. Article 1 of the First Additional Protocol states:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, art. 1, Mar. 20, 1952, Europ. T.S. No. 9, available at <http://conventions.coe.int/treaty/en/Treaties/Html/009.htm>.

12. PELLONPÄÄ, *supra* note 10, at 571–75.

13. For example, in *Jokela v. Finland*, 2002-IV Eur. Ct. H.R. 7, the European Court of Human Rights held that article 1 of the First Protocol was violated when the assessment of compensation for expropriation purposes and the appraisal of real property for inheritance taxation purposes led to considerably different appraised values of the real property in question. In such situations, Finland has also been found to have violated article 6 (the right to a fair trial) due to the unreasonable length of proceedings. One example is *Kukkola v. Finland*, Eur. Ct. H.R. (Nov. 15, 2005), <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (search “Complete Text” for “Kukkola”; then follow “Case

### *B. Legislation on Expropriation*

The general statute concerning expropriation is the Act on Expropriation of Immovable Property and Special Rights (“Expropriation Act”). It applies to expropriations of property and special rights. In addition, the Expropriation Act applies to situations where the owner’s right to use or dispose of a property or the owner’s special right is limited.<sup>14</sup> In other words, the scope of the Expropriation Act is not limited to expropriation of ownership or special rights; it extends to land-use restrictions.

The Act explains the constitutional requirements of public need and full compensation. The expropriation is, with some exceptions, allowed by an expropriation permit issued by the Council of State.<sup>15</sup>

According to the Expropriation Act, expropriation is allowed for a public need. However, if the objectives of the expropriation can be reached with other means, or if the inconvenience caused to a private interest exceeds the public gain, the expropriation may not be executed.<sup>16</sup> In practice, however, these requirements have a rather low significance in Finland.<sup>17</sup>

The principal rule in expropriation procedures is the principle of judicial investigation. This means that a person is given legal protection *ex officio*, without his or her explicit claim to the authority. However, it is possible to make an agreement on the compensation between the landowner and the expropriator.<sup>18</sup>

The Act discusses the requirements and procedure of expropriation, as well as compensation assessment.<sup>19</sup> The compensation system is based on

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of Kukkola v. Finland” hyperlink), where the applicant’s property was subject to judicial proceedings during a period of about eight years and three months. The European Court of Human Rights concluded that there were delays in the expropriation and the compensation proceedings; it found no explanation to justify these delays. Therefore, the Court held that there had been a violation of article 6 § 1 of the Convention on account of the length of the proceedings.

14. Laki kiinteän omaisuuden ja erityisten oikeuksien lunastuksesta [Act on the Redemption of Immovable Property and Special Rights] (603/1977) § 3 [hereinafter Expropriation Act].

15. *Id.* § 5.

16. *Id.* § 4.

17. *See, e.g.*, Tuomo Heinonen, Vastikemaat ja maapankki maankäyttöhankkeissa [Land for Exchange and Land Banking in Land Development Projects] 21–22, 48 (Oct. 25, 2005) (dissertation for Doctor of Science in Technology, Helsinki University of Technology), available at <http://lib.tkk.fi/Diss/2005/isbn9512278383/isbn9512278383.pdf> (author’s trans.) (last visited Mar. 27, 2006).

18. Expropriation Act § 40.

19. For more information on Finnish expropriation procedures and compensations, see Kauko Viitanen, Compulsory Purchase as an Administrative Procedure—Based on Finnish Legislation and Experiences (Oct. 3–7, 2004) (paper presented at the proceedings of the 3rd International Federal of

full compensation: all economic losses suffered by the persons in direct expropriation relation must be assessed and compensated.<sup>20</sup> This principle applies both to persons whose property or special rights are taken, and to persons whose rights of use or administration of such property or special rights are limited.

Those who suffer only indirectly from expropriation may receive compensation for disturbance and damages on the basis of section 38. Compensation may be granted if the following requirements are met: (1) the disturbance or damage caused by the expropriation is significant; (2) the disturbance or damage would be compensated in an expropriation situation; (3) a demand for compensation for the disturbance or damage is made; and (4) compensating the disturbance or damage is considered reasonable, taking into account the circumstances.<sup>21</sup> This provision aims to ensure reasonableness between the parties in the direct expropriation relation and those outside this relation who are in a comparable situation.<sup>22</sup>

Compensation consists of three parts: compensation for the object, severance, and damages compensation. “Object” compensation is the fair price (market value) of the property or property right that is being taken. The fair market price can be considered as compensation for the owner’s objective loss. “Severance” compensation is paid for the permanent nuisance caused by the expropriation of property not included in the transfer, which occurs in situations when only a part of the property is the direct object of the expropriation. “Damage” compensation is paid for specific damages due to the expropriation, such as moving costs or loss of business profits.<sup>23</sup>

As a general rule, the compensation is monetary. It is possible to substitute monetary compensation for some other form of compensation by means such as land readjustment, land exchanges, and land banking.<sup>24</sup>

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Surveyors (FIG) Regional Conference in Jakarta, Indonesia), available at [http://www.fig.net/pub/jakarta/papers/ts\\_21/ts\\_21\\_7\\_viitanen.pdf](http://www.fig.net/pub/jakarta/papers/ts_21/ts_21_7_viitanen.pdf). See also IINA KORHONEN, EXPROPRIATION OF REAL PROPERTY: GENERAL LAWS ON EXPROPRIATION IN FINLAND, SWEDEN, NORWAY AND ENGLAND 137 (Helsinki Univ. of Tech. 1997).

20. Laki kiinteän omaisuuden ja erityisten oikeuksien lunastuksesta [Act on the Redemption of Immovable Property and Special Rights] (603/1977) § 29(1) [hereinafter Expropriation Act].

21. KARI KUUSINIEMI & HANNU PELTOMAA, LUNASTUSLAINSAADÄNTÖ JA KORVAUSJÄRJESTELMÄ [EXPROPRIATION LEGISLATION AND COMPENSATION SYSTEM] 144–45 (Edita 2000).

22. *Id.* at 214–15.

23. Expropriation Act §§ 30–33, 35, 37.

24. See Kiinteistömuodostamislaki [Real Estate Formation Act] (554/1995) § 63, available at <http://www.finlex.fi/en/laki/kaannokset/1995/en19950554.pdf> [hereinafter Real Estate Formation Act] (Ministry of Agric. and Forestry unofficial trans.); Expropriation Act § 23; Maantielaki [Highways Act] (503/2005) § 63, available at <http://www.finlex.fi/en/laki/kaannokset/2005/en20050503.pdf>

Compensation is assessed in an expropriation survey carried out by the National Land Survey Office. Appeals concerning the decisions made in the survey are submitted to a land court.<sup>25</sup> Land court decisions can be appealed to the Supreme Court of Justice; however, one must have leave to appeal.<sup>26</sup>

As the general statute on expropriation, the Expropriation Act applies to expropriation and compensation assessment procedures for land-use restrictions laid out in other Acts.<sup>27</sup> For some public interest projects, such as major power lines and railroads, there may be a lack of special legislation concerning planning and building proceedings, in addition to expropriation and land-use restrictions. In that case, the general Expropriation Act applies.<sup>28</sup>

### C. *The Requirements for Compensation for Land-Use Restrictions*

A demand on compensation for a land-use restriction is valid when there are statutory grounds for compensation. The general assumption is that the landowner must suffer the losses of any restrictions, unless there is a legal basis (usually a statutory provision) for compensation.<sup>29</sup> This section aims to give a comprehensive overview of these provisions concerning some common plan types that impose restrictions on land-use and landowners' rights.

As mentioned earlier, the right to compensation for land-use restrictions is limited by the principle of social obligation. This principle is illustrated by the so-called compensation threshold, whereby the amount of compensation for land-use restrictions must exceed a minimum threshold for compensation to be paid. This applies to several land-use restrictions. The compensation threshold is based on a certain "tolerance" obligation, where the landowner must tolerate some restrictions without

[hereinafter Highways Act] (Ministry of Transp. and Comm'n unofficial trans.).

25. A land court is a specialized section of a district court. Eight of the fifty-nine district courts in Finland have a land court. For more information about the Finnish court system, see Oikeuslaitos-Finnish courts, <http://www.oikeus.fi/8854.htm>.

26. Laki kiinteän omaisuuden ja erityisten oikeuksien lunastuksesta [Act on the Redemption of Immovable Property and Special Rights] (603/1977) § 89 [hereinafter Expropriation Act]; Real Estate Formation Act § 238.

27. P. Vihervuori, *Lunastus* [Expropriation], in YMPÄRISTÖOIKEUS [ENVIRONMENTAL LAW] 299–300 (Kari Kuusiniemi et al. eds., 2001) (author's trans.).

28. *Id.* at 302; *Tiet ja Kadut* [Roads and Streets], in YMPÄRISTÖOIKEUS [ENVIRONMENTAL LAW], *supra* note 27, at 918 (author's trans.). However, new legislation concerning railway building procedure and planning (Railways Act 110/2007) has been enacted and will come into force on January 1, 2008.

29. UNGERN, *supra* note 7, at 23.

compensation. The compensation threshold also aims to exclude minor disturbances from compensation, and it limits the total amount of compensation for various restrictions.<sup>30</sup>

The compensation threshold is established in the legislation by including qualitative limits to the right to compensation. They define the types of use restrictions that are compensated, including if the owner cannot use the area “in a manner generating reasonable return,”<sup>31</sup> or if the plan causes the landowner “significant inconvenience.”<sup>32</sup> The compensation threshold varies depending on the legislation. Terms such as “reasonable” and “significant” require interpretation, and it is often difficult to determine whether the threshold has been exceeded.<sup>33</sup> However, as a main rule, the compensation threshold does not apply to procedures carried out on the basis of the Expropriation Act. The exception to this rule is laid out in section 38, which concerns compensation to individuals other than the landowners whose property is the direct object of the expropriation. These requirements are explained in Part II.B.

Compensating the land-use restriction may include additional requirements besides the principle of judicial investigation. In some situations, the landowner must take some action. For instance, some land-use restrictions are compensated only when the landowner has applied for an exemption (a building permit) from the restriction, and the exemption is not been granted. When nuisance is assessed in accordance with the Act of Compensation for Environmental Damage, the landowner has a duty to show a probable causal link between the nuisance and the injury.<sup>34</sup> In some cases, compensation may also be an alternative to expropriation of ownership.<sup>35</sup>

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30. *Id.* at 30–31.

31. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 101, *available at* <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

32. Luonnonsuojelulaki [Nature Conservation Act] (1096/1996) § 53, *available at* <http://www.finlex.fi/en/laki/kaannokset/1996/en19961096.pdf> [hereinafter Nature Conservation Act] (Ministry of Env't trans.).

33. HENRIK UNGERN, KÄYTÖNRAJOITUSTEN KORVAAMISESTA YLEISKAAVOITUKSESSA [COMPENSATION OF LAND USE RESTRICTIONS IN MASTER PLANS] 142–54 (Pellervon taloudellinen tutkimuslaitos 1997).

34. Ympäristövahinkolaki [Act on Compensation for Environmental Damage] (737/1994) § 3, *available at* <http://www.finlex.fi/en/laki/kaannokset/1994/en19940737.pdf> [hereinafter Act on Compensation for Environmental Damage] (Ministry of Env't unofficial trans.). *See also* ERKKI J. HOLLO & PEKKA VIHERVUORI, YMPÄRISTÖVAHINKOLAKI [Act on Compensation for Environmental Damage] 111–20 (Lakimiesliiton kustannus 1995).

35. *See* discussion *infra* Parts IV.D, V.B.

As a general rule, the right to compensation does not depend on a period of time where a land-use plan has not been implemented. Some exceptions exist, such as those found in the Land Use and Building Act (LBA), but they are not frequently applied in practice.<sup>36</sup>

The party that is eligible for compensation is the owner of the property or property rights. When ownership changes, property rights are normally transferred with the property to the new owner. As a general rule, the party liable to pay the compensation is the state, municipality, or other public body, depending on the legislation that is applicable to the situation.<sup>37</sup> These public bodies customarily do not negotiate payments of compensation claims because the responsibility to pay is directly based on statutory provisions. However, when an expropriation serves a public need but is carried out for purposes of a private entity (for example, a company building a power line), the private entity is liable for paying the compensation.

#### *D. The Amount of Compensation*

As laid out in the Constitution, the principle of full compensation applies not only to expropriation, but also to other procedures that infringe on the protection of property ownership.<sup>38</sup> As mentioned above, compensation for land-use restrictions is limited by the principle of social obligation. However, when the compensation threshold is exceeded, the compensation is assessed according to the principle of full compensation. In this way, the protection of ownership in these situations is realized.

It can also be argued that the idea of having a compensation threshold is not compatible with the principle of full compensation. In practice, the principle is implemented in different ways, depending on which land-use restriction legislation is applied. For some restrictions with high compensation thresholds, compensation is relatively seldomly issued.<sup>39</sup> Other situations may involve the application of several restrictions on a

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36. For example, according to section 60, paragraph 2 of the Land Use and Building Act, a building permit may not be granted for significant building if a local detailed plan has been in force for thirteen years and, for the most part, the plan has not been implemented or been brought up to date.

37. For example, section 43 of the Land Use and Building Act renders municipalities and other public bodies liable to pay compensation in cases of conditional building restrictions if the area in question is reserved for that public body's needs.

38. Suomen perustuslaki [SP] [Constitution] (731/1999) § 15 (Fin.).

39. UNGERN, *supra* note 7, at 8-9. For example, consider compensation for denying a soil excavation permit under section 8 of the Soil Excavation Act, where the threshold is set to "a manner generating reasonable return." Often, all other uses besides soil excavation are considered to meet this threshold, so compensation is given rarely.



property where none of the restrictions exceeds the compensation threshold. In such situations, it may be argued that the protection of property ownership and the requirement of full compensation are not actually realized.<sup>40</sup>

### III. TYPES OF LAND-USE RESTRICTIONS

Various planning and environmental statutes include regulations governing land-use restrictions. Listed below are the most significant of these statutes accompanied by the types of restrictions that can be laid down. Some of these restrictions and their effects are discussed in more detail later in this Article to give an overview of common situations, where provisions on land-use restrictions and compensation apply.

- The Land Use and Building Act (1999/132): regional, master or local detailed plan, plan regulation, building, or other restriction
- Nature Conservation Act (1096/1996): nature reserve, habitat, or species protection
- Act on the Protection of Buildings (60/1985): building protection order
- Highways Act (503/2005): engineering plan to build a public road
- Water Act (264/1961): building in a body of water
- Forests Act (1093/1996): limitations on the use of the forest due to forest protection
- Soil Excavation Act (555/1981): denial of soil excavation permits
- Real Estate Formation Act (554/1995): easements and land readjustment proceedings
- Private Road Act (358/1962): rights of way
- Mining Act (503/1965): claim
- Antiquities Act (295/1963): buffer zone for a solid relic

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40. JAANA JUNNILA, OIKEUSTURVA MAANKÄYTÖN RAJOITUKSISSA [LEGAL SECURITY IN LAND USE RESTRICTIONS] 203 (Pellervon taloudellinen tutkimuslaitos 1998) (author's trans.).

### A. *Direct Injuries*

Even though section 15 of the Constitution only refers to full compensation in cases of expropriation and has been narrowly interpreted, the requirement of protection of property ownership laid down in the first paragraph of section 15 also requires compensation issues to be addressed in land-use restriction cases. In cases of “near-expropriation,” the requirement for full compensation has been extended to other land-use restrictions. One example is the expropriation of *usufruct* for a public road or a power line. Here, even though ownership has not been transferred, the owner in effect is not able to use the land in any way.<sup>41</sup>

Where the reduction of building right for private development is positioned in relation to the protection of property, compensation for such a restriction is not clearly laid down by legislation or in practice. This matter is discussed in more detail in the section concerning land-use planning.

As a general rule, land-use plans and regulations are permanent. A temporary building restriction can be laid down for the time period a local master plan is being drawn or altered.<sup>42</sup> This restriction also applies to local detailed plans.<sup>43</sup> These restrictions are not covered by the compensation provisions in the LBA.

### B. *Indirect Injuries*

Compensation for injurious affection (severance compensation) constitutes a part of total compensation. This form of compensation is issued in accordance with section 35 of the Expropriation Act.

In addition, injuries to a property that are caused by the designation of an adjacent property for a public utility or service are compensated. The injury is based on the decline in the value of the property due to nuisance, such as noise, dust, and the loss of scenic value. However, the compensation threshold laid out in section 38 of the Expropriation Act may apply. In assessing the compensable nuisance, provisions of the Act on Compensation for Environmental Damage apply.<sup>44</sup> The Act on

41. See the Finnish Parliament’s Constitutional Law Committee Report PeVL 21/1996 (on file with author), for information on the reform of “nature conservation” legislation.

42. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 38(2), available at <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

43. *Id.* § 53.

44. Ympäristövahinkolaki [Act on Compensation for Environmental Damage] (737/1994) § 1, available at <http://www.finlex.fi/en/laki/kaannokset/1994/en19940737.pdf> [hereinafter Act on

Compensation for Environmental Damage provides that the toleration of the nuisance must be deemed unreasonable for compensation to be issued.<sup>45</sup> A more detailed description of these types of cases is included in Part V.C and Part V.D.

Compensation for a partial reduction in value caused by the rezoning of an adjacent plot is possible only when an injury of the type described in the previous paragraph occurs, i.e., where the Act of Compensation for Environmental Damage applies.

### *C. Planning Practice*

In practice, the plan drawing authorities usually try to avoid situations where compensation issues arise. In land-use planning, this aim is often realized; however in other instances, such as nature conservation, compensation issues are addressed more often. Alternative procedures, such as the transfer of building rights or land readjustment, may be used as an alternative for monetary compensation.

## IV. OVERVIEW OF LEGISLATIVE REQUIREMENTS FOR LAND-USE RESTRICTIONS AND COMPENSATION

### *A. Land-Use Planning Legislation*

The statute regulating land use, spatial planning, and construction in Finland is the Land Use and Building Act, which came into force in the

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Compensation for Environmental Damage] (Ministry of Env't trans.). The scope of application is as follows:

Compensation shall be paid for a loss defined in this Act as environmental damage, caused by activities carried out in a certain area and resulting from:

- 1) pollution of the water, air or soil;
- 2) noise, vibration, radiation, light, heat or smell; or
- 3) other similar nuisance.

The keeper of a road, railway, port, airport or other comparable traffic area shall also be considered to be carrying out activities referred to above in paragraph 1.

This Act does not apply to contractual liability for compensation.

*Id.* It should be noted that as a main rule, the assessment of environmental damage as defined by the Act is not carried out in the survey, but rather in court proceedings. There are exceptions to this rule, such as road surveys.

45. *Id.* § 4(1). The obligation to tolerate nuisance is stated as follows: "Compensation shall be paid for environmental damage by virtue of this Act only if toleration of the nuisance is deemed unreasonable, consideration being given, among other things, to local circumstances, the situation resulting in the occurrence of the nuisance, and the regularity of the nuisance elsewhere in similar circumstances." *Id.*

year 2000.<sup>46</sup> The planning system is comprised of four levels of planning: national objectives of land-use planning, regional plans, local master plans (municipality-specific plans or joint plans for several municipalities), and local detailed plans.

Land-use planning objectives are seen, in part, as a national concern. Examples of national objectives include the protection of cultural and natural heritage that have national importance, the functional regional and community structure, communication networks, and energy management. These objectives are approved by the Council of State.<sup>47</sup>

At the level of the regional plan, the national objectives of land-use planning are adapted to regional objectives while land use and community structure are designated at a general level. The plan is drawn by the Regional Council; it is accepted by the highest decision-making authority of the Council and ratified by the Ministry of the Environment. The regional plan acts as a set of guidelines for lower level planning, which includes master plans and local detailed plans.<sup>48</sup>

The purpose of the local master plan is to guide the community structure and land-use planning in a municipality in a more detailed way than the regional plan. A local master plan can also be drawn jointly by several municipalities. The plan consists of written regulations and a map designating areas for different purposes. The plan is accepted by the Local Council. The plan acts as a guideline for the local detailed plan.<sup>49</sup>

The purpose of the local detailed plan is to organize in detail land use, building, and development. The aim is to designate areas necessary for different purposes and to steer building and other land uses. The local authority has a legal obligation to keep the plan up to date. The plan consists of written regulations and a map designating the areas for different purposes. As a general rule, the plan is accepted by the Local Council.<sup>50</sup>

Overall, municipalities in Finland have vast powers concerning land-use planning in their area.<sup>51</sup> It is often said that municipalities have a “planning monopoly.”

46. See generally *Maankäyttö- ja rakennuslaki* [Land Use and Building Act] (132/1999), available at <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

47. Ari Ekroos, *Ympäristönkäytön suunnittelu* [Planning the Use of the Environment], in *YMPÄRISTÖOIKEUS* [ENVIRONMENTAL LAW], *supra* note 27, at 351–60 (author’s trans.).

48. Land Use and Building Act § 25(4); see also Ekroos, *supra* note 47, at 363–67.

49. Land Use and Building Act § 35(1); see also Ekroos, *supra* note 47, at 393–96.

50. Land Use and Building Act § 50; see also Ekroos, *supra* note 47, at 423–27.

51. For example, landowners generally cannot make demands for a plan to be drawn.

### *B. Content Requirements of Land-Use Plans*

The content requirements for all land-use plans are binding on the plan-drawing authority. These requirements are concerned with such matters as the quality of the plan, the assurance that the general aims of the LBA are met, and the plan's reasonableness and fairness towards private interests and the landowner. In addition, the planning process and decisions must adhere to the constitutional right to equality.<sup>52</sup>

The content requirements for regional plans and local master plans establish that these plans may not cause unreasonable inconvenience to the landowner.<sup>53</sup> Whether a landowner is unreasonably inconvenienced is determined on a case-by-case basis, with regard to the plan's regulations, and the area designations and written regulations of the master plan as a whole.<sup>54</sup>

In comparison, the content requirements for local detailed plans state that the plan must not substantially weaken the quality of anyone's living environment in a manner not justified by the plan's purpose.<sup>55</sup> The plan also may not impose restrictions on or cause harm to landowners or other titleholders that could be avoided without disregarding the objectives or requirements of the plan.<sup>56</sup> This provision emphasizes the objectives of the plan in relation to the status of the owner and illustrates the "social function" of the local detailed plan: even unreasonable restrictions may in some cases be imposed on the landowner if genuinely necessary for the public good.<sup>57</sup>

### *C. Legal Effects of Land-Use Plans*<sup>58</sup>

The legal effects of the local master plan on the landowner include restrictions on building and other actions in the area designated in the plan.

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52. The constitutional right to equality is expressed as follows: "Everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person." Suomen perustuslaki [SP] [Constitution] (731/1999) § 6 (Fin.).

53. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) §§ 28(4), 39(4), available at <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

54. ARI EKROOS & VESA MAJAMAA, MAANKÄYTTÖ- JA RAKENNUSLAKI [LAND USE AND BUILDING ACT] 196–97 (Edita 2005).

55. Land Use and Building Act § 54(3).

56. *Id.*

57. Ekroos, *supra* note 47, at 435–36.

58. The legal effects of the plans are discussed in this Article only to the extent that they concern landowners. Legal effects on other authorities are outside the scope of this Article.

According to section 43 of the LBA, a building permit may not be granted if it hinders implementation of the local master plan.<sup>59</sup> The permit shall be granted, however, if its denial on the basis of the local master plan would cause substantial harm to the applicant and the local authority. In addition, building permits may be granted when some other public entity (different from the one for which the area is reserved for its needs) does not expropriate the area or does not provide reasonable compensation for the harm caused (conditional building restriction).<sup>60</sup> This is an application of the so-called “the money or a permit” principle: if the building restriction causes the landowner significant harm, either the building permit must be granted or, alternatively, the local authority or another public entity may either provide compensation or expropriate the area.<sup>61</sup> Note that this rule also applies to a conditional building restriction laid down in a regional plan.<sup>62</sup>

Section 43 of the LBA permits a local master plan to stipulate that construction that hinders the implementation of the local master plan is prohibited in the plan area or part thereof (building restriction).<sup>63</sup> In such cases, the provisions concerning conditional building restrictions are not applied. Local master plans can also stipulate that landscape-altering actions may not be conducted without permits for landscape work (restriction on action).<sup>64</sup>

The legal effects of a local detailed plan include restrictions on the use of the area designated in the plan. According to section 58 of the LBA, buildings may not be built in violation of the local detailed plan (building restriction), and the detailed plan shall be taken into account with regard to other measures altering the environment.<sup>65</sup> Functions that hinder the designated use for other areas in the local detailed plan may not be located in the plan area.<sup>66</sup> Moreover, functions may not be located in the local detailed plan area if they conflict with regulations issued in the local detailed plan, where the regulations concern the prevention or restriction of harmful or disturbing environmental impacts.<sup>67</sup>

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59. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 43, *available at* <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

60. *Id.*

61. Ekroos, *supra* note 47, at 224–25.

62. Land Use and Building Act § 33(2).

63. *Id.* § 43.

64. *Id.*

65. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 58, *available at* <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

66. *Id.*

67. *Id.*

#### D. Compensation

The general requirement for compensation for land-use restrictions, according to the LBA, is that the area is used in a manner that generates a reasonable return. Minor inconveniences caused by the plan are not compensated. Section 101 of the LBA states the general rule: when the plan<sup>68</sup> designates land for a purpose other than private construction and the landowner therefore cannot use the area *in a manner generating reasonable return*, the local authority, or the State if the area is intended or designated in the plan for State needs, must expropriate the property or pay compensation for the disturbance.<sup>69</sup> This provision does not apply to areas designated for joint use in a shore detailed plan area, areas where the responsibility for plan implementation has been assigned to the landowner or titleholder, road areas of a public road, or street areas as referred to in section 94.<sup>70</sup>

The expropriation and compensation duty may apply to an area designated for agriculture and forestry, but only if special restrictions on use of the area have been imposed in the plan.<sup>71</sup> Designating an area for agriculture and forestry does not in itself constitute a duty to expropriate or pay compensation, and this provision aims to compensate situations, where special restrictions apply (e.g., a building prohibition).<sup>72</sup>

The expropriation and compensation duty does have restrictions. It takes effect only after the landowner's application for an exemption to the restriction has been denied and that decision has gained legal force.<sup>73</sup> This means that the landowner is entitled to compensation when the restriction's effects are realized, not merely when the restriction comes into force.<sup>74</sup> The duty is also avoided if the plan is changed by the

68. This could be a local detailed plan, or a building or action restriction in the local master plan. These restrictions are detailed as follows in section 43(2) of the Land Use and Building Act:

It may be stipulated in the local master plan that building which hinders the implementation of the local master plan is not allowed in the plan area or part thereof (*building restriction*). . . . It may also be stipulated in the local master plan that action altering the landscape may not be taken without the permit referred to in section 128 (*restriction on action*).

*Id.* § 43(2).

69. *Id.* § 101.

70. *Id.*

71. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 101, available at <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

72. EKROOS & MAJAMAA, *supra* note 54, at 536–37.

73. Land Use and Building Act § 102.

74. EKROOS & MAJAMAA, *supra* note 54, at 538.

municipality and, if after the change, the landowner can use the area in a manner generating reasonable return.<sup>75</sup>

According to LBA section 94, when a local detailed plan is approved for an area for the first time, the local authority gains ownership of any street area not previously in its ownership.<sup>76</sup> This provision only applies to the land; losses for buildings or other improvements are compensated.<sup>77</sup>

Compensation for the transfer of the street area is granted if the surface area of the concerned property exceeds twenty percent of the total land owned by the landowner in the local detailed plan area (excluding agricultural, forest, and water areas).<sup>78</sup> Compensation may also be granted if the property is larger than the building volume (gross external area) permitted for the land remaining in his or her ownership in the plan area concerned.<sup>79</sup> In other cases, the local authority is required to pay compensation for the street area to the landowner, determined according to the provisions of the Expropriation Act.<sup>80</sup>

Notwithstanding the limitation of this provision, the local authority is obliged to compensate the landowner for the street area if, taking into account the total impact of the transfer and the plan on the landowner, transferral without compensation is exceptionally and manifestly unreasonable.<sup>81</sup> If the landowner does not have to transfer a street area without receiving compensation as referred to above, or has to transfer a significantly smaller area, the local authority may set reasonable compensation to be paid by the landowner (charge for a street area).<sup>82</sup>

The local authority is obliged to pay compensation when the implementation of a local detailed plan causes a landowner special disturbance or losses, provided that the losses are not insignificant. Likewise, the State is obliged to pay compensation for similar losses when the area is intended or designated for State needs.<sup>83</sup> Despite the generality of this compensation provision, it is not intended to be a general compensation provision for the limitations that a plan might impose on landowners. This provision applies mainly to situations when (1) the

75. Land Use and Building Act § 102.

76. *Id.* § 94.

77. EKROOS & MAJAMAA, *supra* note 54, at 513, 545.

78. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 104, *available at* <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* § 105(1).

83. *Id.* § 106.



traffic connection to a plot is cut off due to resurfacing a street to a required height, or (2) a park or recreational area is removed, and the accompanying difficulty in using or accessing the plot causes a decrease in property value.<sup>84</sup>

According to LBA section 103, unless otherwise provided elsewhere in the LBA, the Expropriation Act shall be observed when an expropriation is implemented under the LBA, or when compensation deriving from a transfer or restriction on land use as referred to in the LBA is determined.<sup>85</sup>

As mentioned in the section concerning direct injuries, the question of building rights for private development and their position in relation to the protection of property and compensation is not clearly laid down in the legislation and practice.

When building rights are completely removed, the compensation provisions in LBA section 101 and the threshold of reasonable return apply. However, content requirements<sup>86</sup> dictate that landowners should be treated reasonably; situations where the decline of development rights in the plan would be unreasonable and cause considerable damage should not occur.

As a general rule, compensation is not issued for a partial reduction of building rights in areas that are intended for private development.<sup>87</sup> The LBA does not include provisions for this type of reduction. Therefore, in theory, it should be possible to partially reduce building rights in this situation without having to pay compensation if the content requirements of the plan are met (for example, landowners are treated fairly and equally<sup>88</sup>). The situation, however, is not completely clear because there is

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84. EKROOS & MAJAMAA, *supra* note 54, at 548–49.

85. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 103, *available at* <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

86. Land Use and Building Act §§ 28(4), 39(4), 54(3).

87. Ekroos, *supra* note 47, at 439–40.

88. *See, e.g.*, Korkein Hallinto-Oikeus [KHO] [Supreme Administrative Court] 2005:5 (Fin.), *available at* <http://www.kho.fi/en/paatokset/29794.htm>. This case was concerned with a detailed plan that designated areas both for private housing development and recreational use. The plaintiff claimed that he had been treated unequally in the plan drawing process because his property had been designated significantly less building rights and more recreational areas than the areas belonging to other landowners. According to the Court, the content requirements of the plan and the constitutional right of equal treatment must be taken into account by the plan drawing process. However, the Court suggested that relevant aspects concerning land use in the specific plan area may be a basis to designate different areas for different uses. The Court held that the plaintiff had not been treated unequally because the area concerned was such that the differences could be justified on the abovementioned basis.

*See also* Korkein Oikeus [KKO] [Supreme Court] 2002:93 (Fin.). Here, the Supreme Court held that a building right for one plot that was relatively lower compared to the building rights of adjacent

little case law.<sup>89</sup> At the moment, there are two pending cases that might lead to a compensational situation. These cases concern the alteration of local detailed plans that led to significant reductions in building rights compared to surrounding properties.<sup>90</sup> Although the LBA does not include a compensation clause, the landowner could try to use the constitutional provisions on protection of property and equality as a basis for a compensation claim. At the moment, however, there is no precedent for this type of case.

In theory, the scope of land ownership includes a so-called “basic building” right, where landowners have the right to use their properties for building. This right is seen as a part of the constitutional protection of property and the “normal, reasonable, and sensible use” of a property suitable for building. In addition, this right is taken into account in planning decisions and compensation assessments.<sup>91</sup> However, the decisions concerning building rights are made according to the provisions of the LBA. In local detailed plan areas, the amount and type of building right designated to the plan areas depend solely on the decision of the plan drawing authority. Therefore, the landowner does not have a right to claim a certain amount of building right for private development.<sup>92</sup>

## V. SPECIFIC TYPES OF LAND-USE RESTRICTIONS

### A. *Protection of Buildings*

Protection of a cultural or historical building, building group, or built area can be accomplished through four different statutes. The primary means is through a protection regulation in a land-use plan.<sup>93</sup> Protection can also be accomplished through a governmental decision by the Regional Environmental Authority made under the Act on the Protection

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plots due to the building of a power line, was not subject to compensation in the expropriation proceedings. According to the Supreme Court, the matter concerning the amount of building right had already been decided when the detailed plan for the area was drawn. The Court held that the reduction of the building right was in fact a result of the plan decision and was therefore not compensable.

89. For example, in Helsinki there has not been a case of this type for at least twenty years.

90. Interview with M. Nordqvist and K. Vanhanen, Real Estate Dep’t, in Helsinki, Finland (June 12, 2006 and June 16, 2006).

91. VEIKKO O. HYVÖNEN, KAAVOITUS- JA RAKENTAMISOIKEUS [PLANNING AND BUILDING LEGISLATION] 60–61 (Hyvönen & Co. 1988).

92. Ekroos, *supra* note 47, at 439–40. *See also supra* Part IV.C.

93. Ari Ekroos, *Rakennussuojelu* [Building Protection], in YMPÄRISTÖOIKEUS [ENVIRONMENTAL LAW], *supra* note 27, at 1071–72.

of Buildings.<sup>94</sup> Protection of state owned and church buildings is carried out on the basis of other statutes.<sup>95</sup>

### *1. The Land Use and Building Act*

In land-use planning, special cultural values in the built environment must be taken into account by the plan drafting authority.<sup>96</sup> Orders on building or area protection are possible at all levels of planning (regional, master, and local detailed plan) but are most commonly found in the local detailed plan, because it contains the most detailed protection regulation.

The protection tool can either be a protection regulation or an area designation in the land-use plan.<sup>97</sup> When an area or building requires protection due to its landscape, natural value, built environment, cultural and historical values, or other special environmental values, the regulations necessary for this purpose may be issued in the local detailed plan.<sup>98</sup> As a general rule, the protection regulations must treat landowners reasonably.<sup>99</sup>

### *2. The Act on the Protection of Buildings*

Cultural or historical buildings, building groups, or built areas are preserved as objects of national cultural heritage according to the Act on the Protection of Buildings.<sup>100</sup> The protection order must include necessary provisions for the preservation of the historical value of the building, building groups, or areas.<sup>101</sup> Owners of protected properties are entitled to compensation for any loss caused by the protection.

According to the Act on the Protection of Buildings, the State pays compensation for the building protection. The requirements for compensation are that, due to the protection order, the owner cannot use the building *in* an ordinary manner *or* a manner that produces reasonable return, and that the disturbance or damage incurred to the owner is not

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94. *Id.*

95. *Id.* These statutes are not discussed in this Article.

96. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 54, available at <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

97. *Id.* § 57.

98. *Id.*

99. *Id.*

100. *See generally* Rakennussuojelulaki [Act on the Protection of Buildings] (60/1985) (Fin.) [hereinafter Act on the Protection of Buildings].

101. *Id.* § 1; *see also id.* § 6.

minor in significance.<sup>102</sup> If the requirements are met, the owner is entitled to full compensation. If the owner has to take extraordinary measures to maintain the cultural or historical value of the building, these costs are covered from State funds. These do not include the normal maintenance costs of the building.<sup>103</sup>

If a building protection regulation in a land-use plan concerns a property or area covered by the Act on the Protection of Buildings, this constitutes an exception to the requirement of reasonableness towards the landowner. Compensation is issued in accordance with the provisions described above, with the exception that in this case they are paid by the local authority, with the possibility of subsidies from government funds.<sup>104</sup>

### B. Nature Conservation

The Nature Conservation Act regulates the protection of nature and landscape in Finland.<sup>105</sup> It also implements the obligations set by European Union legislation on habitat and species protection.<sup>106</sup> The aim of the Act is to maintain biological diversity, conserve nature's beauty and scenic value, promote the sustainable use of natural resources and the natural environment, promote awareness and general interest in nature, and promote scientific research.<sup>107</sup>

One way to promote conservation is to use nationwide conservation programs, which establish nationally significant areas as nature reserves. These programs are drafted by the Ministry of the Environment and approved by the Council of State.<sup>108</sup> These programs can prevent landowners from taking actions in these areas, if those actions could hinder the achievement of the conservation goals laid out in the

102. *Id.* § 11(1).

103. *Id.* § 11(2).

104. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 57(3), available at <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act] (unofficial trans.).

105. Luonnonsuojelulaki [Nature Conservation Act] (1096/1996), available at <http://www.finlex.fi/en/laki/kaannokset/1996/en19961096.pdf> [hereinafter Nature Conservation Act] (Ministry of Env't unofficial trans.).

106. See Council Directive 92/43, On the Conservation of Natural Habitats and of Wild Fauna and Flora [Habitats Directive], 1992 O.J. (L 206) (EC), available at [http://europa.eu.int/eur-lex/en/consleg/pdf/1992/en\\_1992L0043\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1992/en_1992L0043_do_001.pdf); Council Directive 79/409, On the Conservation of Wild Birds [Bird Directive], 1979 O.J. (L 103) (EC), available at [http://europa.eu.int/eur-lex/en/consleg/pdf/1979/en\\_1979L0409\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1979/en_1979L0409_do_001.pdf).

107. Nature Conservation Act § 1.

108. *Id.* § 8.

program.<sup>109</sup> The Natura 2000 network, a European ecological network of special areas of conservation, is one specific conservation program based on the Habitats directive.<sup>110</sup> Its goals of conservation are more demanding than those of the abovementioned programs.

A nature reserve can be a national park, natural park, or “other” nature reserve.<sup>111</sup> The first two can only be established on state-owned land, but “other” nature reserves can be established on private land according to section 24 of the Act.<sup>112</sup> Voluntary means of conservation have priority, but an area may also be established as a nature reserve without the owner’s consent.<sup>113</sup> In such a case, compensation for the inconvenience is subject to protection rules, which prohibit actions that would cause changes in nature.<sup>114</sup>

Habitat types listed in section 29 of the Act are protected without a separate conservation decision.<sup>115</sup> Species that are at imminent risk for extinction can be placed under a strict protection order by decree, according to section 47, which prohibits alteration of the site hosting such a species.<sup>116</sup>

The requirements for compensation to the landowner or holder of special rights as a result of these protection measures (namely nature reserves, protected habitats, and alteration prohibitions) are laid out in section 53.<sup>117</sup> The landowner is entitled to full compensation from the State, if the disturbance caused by the protection decision is of significance.<sup>118</sup> However, the State is not required to pay compensation until the owner has applied for an exemption from the prohibition and the application has been denied.<sup>119</sup> If no settlement is reached on compensation or an alternative form of protection, an application can be submitted to the district survey office for assessment of compensation.<sup>120</sup> The compensation is determined in accordance with the provisions of the

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109. *Id.* § 9.

110. *Id.* § 66.

111. Luonnonsuojelulaki [Nature Conservation Act] (1096/1996) § 10, available at <http://www.finlex.fi/en/laki/kaannokset/1996/en19961096.pdf> (Ministry of Env’t unofficial trans.).

112. *Id.* § 24.

113. *Id.* § 50.

114. *Id.* §§ 10, 24.

115. *Id.* § 29.

116. *Id.* § 47.

117. Luonnonsuojelulaki [Nature Conservation Act] (1096/1996) § 53, available at <http://www.finlex.fi/en/laki/kaannokset/1996/en19961096.pdf> (Ministry of Env’t unofficial trans.).

118. *Id.*

119. *Id.*

120. *Id.*

Expropriation Act.<sup>121</sup> The scope of application of the compensation provision is limited. According to the Nature Conservation Act, it does not apply to all protection measures possible (for example, the protection of a landscape area or a natural monument).

### C. Power Lines

A major power line construction requires limitations to the land use in the power line area, as well as in its vicinity. This procedure (extending to the area of several local authorities) is carried out in accordance with the provisions of the Expropriation Act, as there is no special legislation concerning this type of project. Usually this is carried out by expropriation of a usufruct to the areas needed for the power line, along with restrictions on land use (such as, for example, the maximum height of trees) within the necessary buffer areas.<sup>122</sup>

The expropriation proceedings carried out by the National Land Survey Office are based on an expropriation permit granted by the Council of State. In the proceedings, compensation for the expropriation of the usufruct is issued for the objective value, and severance and damage incurred. They are assessed according to the sections 29 to 37 of the Expropriation Act.

A power line expropriation illustrates the application of section 38 of the Expropriation Act, as it concerns landowners outside the scope of the expropriation, whose ownership or other rights are not the direct object of expropriation. According to this section, if, due to an expropriation or an expropriation enterprise, a worker, neighbor, or other person suffers significant injurious affection or damage that would have been compensated if the property had been the object of expropriation, the injurious affection or damage may be compensated upon request, if the compensation is considered reasonable, taking into account the circumstances.

Usually, this injurious affection is brought about by the decline in the market value of such properties. In a power line expropriation, such a decline may be caused by impairment of the scenery, as well as suspected health risks attributed to major power lines.<sup>123</sup> According to a precedent

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121. *Id.*

122. KARI KUUSINIEMI, *YMPÄRISTÖN MUUTOSTEN KORVATTAVUUS PAKKOTOIMITILANTEISSA* [COMPENSATION FOR CHANGES IN THE ENVIRONMENT IN COERCIVE MEASURE SITUATIONS] 67 (Lakimiesliiton kustannus 1997).

123. *Id.* at 134–38, 165–69.

case of the Finnish Supreme Court concerning compensation, the Court stated that although the health risks involved with power lines are not considered indisputable, the fear of such risks does have an effect on the property price, and therefore, compensation must be issued.<sup>124</sup>

#### *D. Public Roads*

The new Highways Act came into force on January 1, 2006. It includes provisions on highways, highway management, and the rights and obligations of the party responsible for road management.<sup>125</sup> It also addresses the legal status of real estate owners and other concerned parties.<sup>126</sup> A “highway” is a road intended for general traffic and maintained by the State.<sup>127</sup>

According to the Highways Act, a road must be based on a preliminary engineering plan, which serves as a guideline to the final engineering plan.<sup>128</sup> The final engineering plan indicates the location of the road.<sup>129</sup> It includes an evaluation of the impacts of the road and measures to eliminate or reduce the adverse impacts from the road.<sup>130</sup> Property ownership must be taken into account as much as possible.<sup>131</sup> The plan indicates the buffer zones and lateral clearance areas of the road and also indicates whether any land will be reserved for subsequent widening of the road.<sup>132</sup>

The legal effect of the preliminary engineering plan is a conditional building restriction, which aims to ensure that granting building permits will not impede the execution of the preliminary engineering plan.<sup>133</sup> A building permit will be granted if (1) the requirements for granting one are otherwise met, (2) denial of the permit would result in substantial inconvenience to the applicant, and (3) the party responsible for road management will not expropriate the land or pay compensation for the inconvenience.<sup>134</sup> The legal effects of the final engineering plan include

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124. Korkein Oikeus [KKO] [Supreme Court] 1999:61 (Fin.).

125. Maantielaki [Highways Act] (503/2005) § 2, available at <http://www.finlex.fi/en/laki/kaannokset/2005/en20050503.pdf> (Ministry of Transp. and Commc'n unofficial trans.).

126. *Id.*

127. *Id.* § 2; see also *id.* § 4.

128. *Id.* § 20.

129. *Id.* § 22.

130. *Id.*

131. Maantielaki [Highways Act] (503/2005) § 22, available at <http://www.finlex.fi/en/laki/kaannokset/2005/en20050503.pdf> (Ministry of Transp. and Commc'n unofficial trans.).

132. *Id.*

133. *Id.* § 20.

134. *Id.*

provisions on expropriation and restrictions on building in the areas covered by the plan.<sup>135</sup> The plan constitutes a legal basis for expropriation of the ownership and other property rights concerning the road area defined in the plan.

Chapter 4 of the Highways Act contains provisions on land-use restrictions concerning areas outside the road area, which may be included in the final engineering plan. These include buffer zones and lateral clearance areas outside the buffer zones.<sup>136</sup> Limitations affect the available use of such areas for building, storage facilities, fences, planting vegetation, and other measures, which might pose a hazard to road safety.<sup>137</sup> The road authority may grant an exemption from these limitations, and they primarily only apply to measures taken after the restrictions were laid down.<sup>138</sup> Landowners may also be obliged to allow minor devices and structures, such as traffic signs, snow fences, and snow itself, to be placed on their property.<sup>139</sup>

The acquisition of the road area is carried out in a road survey by the National Land Survey Office.<sup>140</sup> The road survey defines the object of the expropriation, the objective compensation for ownership, and other rights. It also assesses severance and damages in accordance with the provisions of the Highways Act and Expropriation Act. In road surveys, the parties involved are not limited to those whose properties are direct objects of the expropriation. Other landowners whose interests and rights are affected may also gain the status of an involved party in the survey, and may receive compensation for damage or injury (like dust or noise) caused by the road. Furthermore, such parties' rights to compensation are not limited by the compensation threshold of section 38 of the Expropriation Act.<sup>141</sup> Their compensation is assessed in accordance with the principle of judicial investigation.<sup>142</sup>

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135. *Id.* § 26.

136. *Id.* § 22.

137. Maantielaki [Highways Act] (503/2005) § 48, available at <http://www.finlex.fi/en/laki/kaannokset/2005/en20050503.pdf> (Ministry of Transp. and Commc'n unofficial trans.).

138. *Id.*

139. *Id.* § 50.

140. *Id.* § 53.

141. *Id.* § 55.

142. See discussion *supra* Parts II.B, V.C.



## VI. CONCLUDING REMARKS

This Article described land-use restrictions and principles in Finnish legislation and their relation to the constitutional protection of property ownership. It aimed to give an overview of both the legislation concerning different types of land-use restrictions and the requirements for compensation concerning these restrictions.

In Finland, the economic rights of landowners are fairly well secured during expropriation and other similar proceedings, both where the landowners' rights are direct objects of expropriations and also where they are indirectly affected. Because the annual number of such proceedings is so great, a fairly uniform and generally accepted practice on compensation has developed.

In practice, however, landowners often are not aware of their rights concerning compensation. In addition, the lack of information about relevant legislation and plans makes it difficult for landowners to predict the future course of events. It does not help that the duration of the planning process is long. When the procedure for compensation assessment has begun, the position of the landowner is more secure, mainly due to the principle of judicial investigation. The authorities also have an obligation to give advice and inform the landowners about the procedure.

The situation is more difficult to determine for land-use restrictions based on public planning decisions. Under the Finnish system and practice, restrictions that treat all landowners alike do not establish a right to compensation in general. Also, in situations where the restriction is considered minor because it does not exceed the threshold of compensation, no compensation may be granted. There is no established practice for cases where several public planning decisions concurrently lead to a takings situation, when none of the restrictions in themselves exceed the compensation threshold. In some cases, an actual land-use restriction is imposed on the landowner by a land-use plan, but the right to compensation is established only when the landowner first applies for an exemption from the restriction and this exemption is denied. The local authority then has the option of changing the land-use plan to avoid paying compensation. Moreover, the landowner may lose ownership of the property, because in such situations the authorities have the right to expropriate the whole property instead of paying compensation.

An exceptional feature in the Finnish land-use planning system is the landowner's duty to transfer without compensation the ownership of any street area designated in the first local detailed plan to the local authority.

This has been justified by the increased value of the landowner's property as a result of the plan, so that as compensation for this increase, the landowner must give up a part of the property for the benefit of the local authority. In the name of equality, some landowners may be obliged to pay compensation to the local authority, if the street area transferred from them is smaller than the areas from other landowners.

The Finnish legislation has developed largely in accordance with the German-Scandinavian legal tradition, although not without individual features. In the future, the increasing European Community regulation and harmonization will lead to further integration in the practices in the whole area of the European Union.